

CHAPTER 820 Massage Regulation

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CROSS REFERENCES

Sex offenses, prostitution, etc. - see Code of Va. ' 18.2-344 et seq.
 Crimes against nature - see Code of Va. ' 18.2-361
 Obscenity defined - see Code of Va. ' 18.2-372
 Adoption of ordinances prohibiting obscenity - see Code of Va. ' 18.2-389
 Disorderly houses - see Code of Va. ' ' 48-7 to 48-15
 Physician and surgeon law not applicable to masseurs - see Code of Va. ' 54.1-2901
 Certification of massage therapists - see Code of Va. ' 54.1-3029
 Business license required - see B.R. & T. Ch. 840

820.01 SHORT TITLE.

This chapter shall be known and may be cited as the "Loudoun County Massage Regulation Ordinance." (Ord. 97-07. Passed 7-2-97.)

820.02 DEFINITIONS.

As used in this chapter, the following words and terms shall have the meanings ascribed to them, except in those cases when the context clearly indicates a different meaning. Persons operating in more than one of the categories of activity defined in this section shall be deemed to fall within each such category for the purposes of this chapter.

- (a) "Massage" means the systematic application of pressure to any degree, manually or by any instrumentality, to any portion of the body of another person for the purpose of producing the comfort, relaxation, stimulation or other enjoyment, or contributing to the health and well being of such person, including the rubbing, stroking, kneading, tapping or vibrating thereof.

- (b) "Massage establishment" means any establishment having a fixed place of business where massages are administered for pay. This definition shall not be construed to include hospitals, nursing homes, medical clinics or the office of a physician, surgeon, chiropractor, osteopath or physical therapist duly licensed by the Commonwealth of Virginia, nor barber shops or beauty salons in which massages are administered only to the scalp, the face, the neck or the shoulder. This definition shall not include any establishment offering or providing facilities for and instruction in controlled exercise, weight lifting, calisthenics and general physical fitness, which is actually occupying premises of not less than 5,000 square feet, of which not more than five percent is used for massages, and whose gross income for massages does not exceed fifteen percent of the total gross business income at any such business location.
- (c) "Massage technician" means any person who administers a massage to another person for pay and who has not made a study of the underlying principles of anatomy and physiology as generally included in a regular course of study by a recognized and approved school of massage. This definition shall not be construed to include a physician, surgeon, chiropractor, osteopath, physical therapist or nurse duly licensed by the Commonwealth of Virginia.
- (d) "Massage therapist" means a person who practices or administers massage to another person for pay and who is certified as a massage therapist by the Virginia Board of Nursing.
- (e) "Sexual or genital parts" means the penis, genitals, pubic area, anus, perineum or vulva of any person. (Ord. 97-07. Passed 7-2-97.)

820.025 EXEMPTIONS.

This chapter shall not apply to the following individuals while engaged in the personal performance of the duties of their respective practices:

- (a) Physicians, surgeons, chiropractors, osteopaths or physical therapists who are duly licensed to practice their respective professions in the Commonwealth of Virginia;
- (b) Any person who holds a license to practice professional nursing in the Commonwealth of Virginia;
- (c) Barbers and beauticians duly licensed under the laws of the Commonwealth of Virginia, except that this exemption shall apply solely to the massaging of the head, neck, face, scalp, shoulders or hair; or
- (d) Persons employed at hospitals, nursing homes or medical clinics while such persons are engaged in the personal performance of such employment. (Ord. 97-07. Passed 7-2-97.)

820.03 PERMIT REQUIRED; APPLICATION; ISSUANCE; REVOCATION.

(a) Permit Required. The following persons are required to obtain individual permits in order to participate in the operation of a massage establishment or to administer massage:

- (1) The owner, operator or manager of a massage establishment;
- (2) A massage technician; or
- (3) A massage therapist.

(b) Application Procedure. Any person required to have a permit under this chapter shall make written application for the same to the County Sheriff or to his or her duly authorized agent. Such application shall be upon forms established and caused to be issued by the Sheriff and shall include, but not be limited to, the following items:

- (1) The name, sex, weight, height and date and place of birth of the applicant and a current photograph of the applicant;
- (2) The current and previous two homes and business addresses and the phone number of the applicant;
- (3) A sworn statement as to whether or not the applicant has ever been convicted, pled nolo contendere or suffered a forfeiture on any felony charge or on a charge of violating any provision of Sections 18.2-309, 18.2-344 through 18.2-361 and Sections 18.2-370 through 18.2-389 of the Code of Virginia of 1950, as amended, which laws relate to sexual offenses, or on a charge of violating a similar law of any other jurisdiction;
- (4) A statement indicating that it is unlawful for any person, either knowingly or through gross negligence, to make a false or misleading statement on the application, and that violations of this prohibition shall be treated as misdemeanors and shall further constitute grounds for automatic denial of such application or revocation of any permit issued under such application; and
- (5) Every person applying for a permit as a massage therapist shall provide proof of current certification as a massage therapist by the Virginia Board of Nursing.

(c) Investigation of Applicant for Massage Permit. Upon receipt of the application, the Sheriff, or his or her duly authorized agent, shall make or cause to be made a thorough investigation of the criminal record of the applicant.

(d) Grounds for Denial of Application. The Sheriff shall deny any application for a permit under this chapter after notice and hearing if the Sheriff finds that the applicant is less than eighteen years of age; has been convicted, pled nolo contendere or suffered a forfeiture on any felony charge or on a charge of violating any provision of Sections 18.2-344 through 18.2-361 and Sections 18.2-370 through 18.2-389 of the Code of Virginia of 1950, as amended, or of any statute or ordinance of any other jurisdiction charging similar or related offenses; and/or has knowingly or with gross negligence supplied false or misleading information in his or her application.

Notice of the hearing before the Sheriff for denial of the application shall be given in writing setting forth the grounds for the proposed denial of permit and the time and place of the hearing. Such notice shall be mailed by certified mail to the applicant's last known address at least ten days prior to the date set for the hearing.

(e) Duration and Revocation of Permit; Supplemental Forms. The permit shall be valid only as to the original applicant to whom it is granted and as to that applicant, such permit shall be valid for a period of one year and shall be renewed for additional one-year periods upon payment of an administrative fee of fifty dollars (\$50.00) payable to the County Treasurer. The permit shall be valid only so long as the conditions set forth above as prerequisites for the original granting of such permit continue to be met and only so long, also, as it does not appear that the applicant supplied false or misleading information on his or her application form. In this regard, it shall be the duty of the applicant to submit to the Sheriff, in writing, any change in information required to be submitted in the original application as soon as practical after the applicant has learned of such change in information. In addition, the applicant shall be required to fill out and promptly return such other supplemental forms as the Sheriff causes to be issued from time to time. Such forms shall be similar in nature to the original application form. If, at any time after notice and hearing, the Sheriff or his or her duly authorized agent concludes that the conditions set forth above as prerequisites for the original granting of such permit have not been met, or do not continue to be met, or that false or misleading information has been supplied by the applicant on his or her application form, the Sheriff shall forthwith issue a written revocation of such permit, mailed or delivered to one of the addresses that have been filed with him or her by the applicant. In the case of any such revocation under this chapter, the applicant shall be thereafter permanently barred from filing any new application under any provision of this chapter as regards any massage establishment operation in the County.
(Ord. 97-07. Passed 7-2-97.)

820.04 FEE.

To compensate the County for the costs of administering this chapter, including the costs of investigation, there shall be payable upon application under this chapter an administrative fee of one hundred dollars (\$100.00), payable to the County Treasurer.
(Ord. 97-07. Passed 7-2-97.)

820.05 PERMIT VIOLATIONS.

No person shall:

- (a) Own, manage or operate a massage establishment or administer massage as a massage technician or massage therapist without possessing a valid permit issued as provided in this chapter. This violation shall be a continuing offense against the peace and dignity of the County.
- (b) Induce or attempt to induce another to operate as the owner, manager or operator of a massage establishment, or as a massage technician or massage therapist, without possessing a valid permit issued as provided in this chapter. This violation shall be a continuing offense against the peace and dignity of the County.

- (c) Knowingly, or through gross negligence, make a false or misleading statement on any application or supplemental form submitted under this chapter. (Ord. 97-07. Passed 7-2-97.)

820.06 OTHER VIOLATIONS.

(a) In addition to other requirements imposed by this chapter, no massage technician or massage therapist shall willfully:

- (1) Place a hand or hands upon, touch with any part of the body, fondle in any manner or massage a sexual or genital part of any other person;
- (2) Expose a sexual or genital part, or any portion thereof, to any other person; or
- (3) Fail to conceal in the presence of any other person, with a fully opaque covering, the sexual or genital parts of such massage technician.

(b) No person owning, operating or managing a massage establishment shall knowingly cause, allow or permit in or about such massage establishment any agent, employee or other person under his or her control or supervision or any other massage technician or massage therapist to perform the acts prohibited in subsection (a) hereof. (Ord. 97-07. Passed 7-2-97.)

820.07 INSPECTIONS.

Inspections of massage establishments shall be made at periodic intervals by plainclothes law enforcement officers, who shall display their badges, to determine if the provisions of this chapter are being complied with. (Ord. 97-07. Passed 7-2-97.)

820.08 DISPLAY OF PERMITS AND CHAPTER.

Every owner, manager and operator of a massage establishment, and every massage technician and massage therapist, shall have on display in a prominent place in the massage establishment or the immediate area in which the technician or therapist operates, any permit issued under this chapter. Every massage establishment shall display a copy of this chapter in a conspicuous place in the massage establishment so that it may be readily seen and read by employees and by persons entering the premises. (Ord. 97-07. Passed 7-2-97.)

820.99 PENALTY; EQUITABLE REMEDIES.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

- (a) In addition to the penalty provided in Section 202.99, whoever violates or fails to comply with any of the provisions of this chapter shall suffer the revocation of any and all permits issued to such person under this chapter and such person shall thereafter be ineligible to be issued any permit under this chapter.
- (b) In addition to the penalties provided in Section 202.99 and this section, relief by way of injunction or other appropriate form of equitable relief shall be available against any owner, manager or operator of a massage establishment or any massage technician or massage therapist not possessing a valid permit issued under this chapter or otherwise violating one or more provisions of this chapter. (Ord. 97-07. Passed 7-2-97.)